

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	)	
	)	
v.	)	CRIMINAL NO. 03-110-A
	)	
BRIAN P. TIVNAN,	)	
	)	
Defendant.	)	

STATEMENT OF FACTS

The United States and the defendant agree that the following facts are true. Had this matter gone to trial, the United States would have proven the following beyond a reasonable doubt through witnesses, testimony, and other competent and admissible evidence:

The defendant, BRIAN P. TIVNAN ("TIVNAN"), was a resident of the State of Washington and is the brother of Kathleen M. Brassell. Defendant TIVNAN was the owner of a company called Infinite Network Solutions in Sammamish, Washington. Kathleen M. Brassell ("BRASSELL") was employed by the Department of Defense from November 1975 until September 2002.

Since approximately 1995, BRASSELL was the Director of the Graphics and Presentations Division, Department of Defense. Her duties included the supervision of approximately fourteen employees who provide audio and video production support, signage, artwork, and other types of graphics-related support to

the Department of Defense, including the office of the Secretary of Defense. As part of her duties, BRASSELL supervised employees' use of the government charge cards used to purchase goods and services to support their office. BRASSELL was also personally assigned a government charge card.

In 1994, the Federal government began widespread use of government charge cards to help streamline certain government purchases of commercial products and services. The DoD authorized various banks to issue government charge cards to its employees. DoD charge cards provide employees who have received authorization the ability to purchase goods and services for the DoD without requiring the time-consuming process of a contract competition and award. DoD employees are not permitted to use the government charge card to purchase goods or services for personal use. Government charge cards have different single purchase limits, but the majority of DoD charge cards are limited to \$2,500 for a single purchase.

BRASSELL had a government charge card issued to her with a single purchase limit of \$50,000.00 and a monthly purchasing limit of \$600,000.00.

From on or about May 1999, and continuing until on or about August 20, 2002, defendant TIVNAN knowingly and intentionally participated in a scheme with BRASSELL to defraud the United

States by using the government-issued charge card of BRASSELL to make false purchases of goods and services from Infinite Network Solutions.

Infinite Network Solutions was created solely to facilitate the fraud in this case and was created, owned and operated by TIVNAN. Defendant TIVNAN and BRASSELL agreed to share the money which the company received for the purchase of fictitious goods and services. Defendant TIVNAN made frequent and regular charges to BRASSELL's government charge card. This was agreed to by defendant TIVNAN and BRASSELL. The fraud was facilitated by the use of computer email, telephone calls and by the United States Mail. BRASSELL received her share of the money generated by this scheme in the form of cash and cashier's checks from defendant TIVNAN. BRASSELL received specific amounts of cash sent to her directly by defendant TIVNAN, as well as cashier's checks made payable to her creditors.

From May 1999 to August 2002, defendant TIVNAN, through Infinite Network Solutions, made approximately 522 false sales of goods and services to DoD paid by BRASSELL's government charge card. The sales totaled approximately \$1,711,816.00. No goods or services were ever received by the DoD from Infinite Network Solutions.

Defendant TIVNAN and BRASSELL agreed to make multiple charges to BRASSELL's government charge card and to spread the

charges out to avoid detection. This resulted in approximately ten false transactions per month for an average loss to the United States of \$30,000.00 per month.

Defendant TIVNAN received payment for the charges made on Brassell's government charge card by deposits to Infinite Network Solutions merchant bank account made by the bank which issued the charge card. The merchant bank account was initially held with the Bank of America and later with Washington Mutual Bank in Sammamish, Washington. The issuing bank then was reimbursed by the United States for the false charges.

On or about June 6, 2002, auditors from the DoD Office of Inspector General ("DoD-OIG") began auditing government charge card purchase records for employees of the Graphics and Presentations Division, including BRASSELL, for the period October 2000 to January 2002. On or about July 16, 2002, at the request of auditors from the DoD-OIG, BRASSELL provided her government charge card statements, invoices, and other supporting documentation for purchases made by her for this period. Some of the materials provided to the auditors by BRASSELL were false and fictitious and were for the purpose of concealing the scheme.

In order to conceal the false and fraudulent activities, BRASSELL created false invoices for the false charge card transactions. The goods and/or services represented in each of the false invoices created by BRASSELL for the audit were never

provided or received by the DoD. The work which the company had falsely invoiced to the United States was either completed by DoD employees or contractors, or consisted of totally false projects which were not requested or completed. During the time of the audit, BRASSELL submitted 293 false and fraudulent invoices for goods and services. These invoices attempted to conceal \$979,450.00 in losses to the United States.

In regard to one project, in order to avoid detection by the DoD-OIG audit, BRASSELL submitted approximately 47 false invoices which reflected that the company had created, and had billed the DoD for, on-site graphics services for the Pentagon Family Assistance Center (PFAC). The PFAC was located at the Sheraton Hotel in Crystal City and was created to provide counseling and support to victims and survivors of the September 11, 2001, attack on the Pentagon. False vouchers for biography boards for victims as well as graphic support for the October 11, 2001, Pentagon Memorial Service were submitted to obstruct the audit. The 47 false vouchers for this project caused approximately \$136,250.00 in loss to the United States.

On August 20, 2002, defendant TIVNAN was present when a search warrant was executed at his residence in Sammamish, Washington. Defendant TIVNAN knew the general nature of the investigation and in August 2002, began to obtain a false identity. Defendant TIVNAN used the identity of Raymond Jeffrey Austin, a friend who had died at age twenty. Defendant TIVNAN

obtained the birth certificate of Raymond Jeffrey Austin, used the internet to research and obtain other identifying information, and hired a private detective to verify the information he obtained. Defendant TIVNAN used the information to obtain a false Arizona identification card, open a bank account and rent an apartment under the name of Raymond Jeffrey Austin.

In October 2002, defendant TIVNAN left the State of Washington for Phoenix, Arizona. Defendant TIVNAN returned his leased vehicle in San Diego and purchased another automobile. Defendant TIVNAN wrote and mailed a letter from San Diego to his brother telling him that he was running from the police. Defendant TIVNAN intended that this letter would be obtained by law enforcement. Defendant TIVNAN intended to mislead law enforcement authorities into thinking he was in San Diego, California, or Mexico when, in fact, defendant TIVNAN was fleeing to Arizona.

Defendant TIVNAN was arrested on February 27, 2003, in Phoenix, Arizona. Defendant TIVNAN was living under the assumed name of Raymond Jeffrey Austin, had opened banking accounts and had credit cards under this false name and was using a false social security number. Defendant TIVNAN admitted at the time of his arrest that he was aware of the warrant issued for his arrest and he was aware he was a fugitive.

Defendant TIVNAN agrees that he willfully, knowingly and unlawfully did steal, purloin, embezzle and convert \$1,711,816.00 in United States Currency, which was the property of the United States.

Respectfully submitted,

Paul J. McNulty  
United States Attorney

By: \_\_\_\_\_  
Robert C. Erickson  
Assistant United States Attorney

SEEN AND AGREED:

\_\_\_\_\_  
Brian P. Tivnan  
Defendant

\_\_\_\_\_  
Laurence J. Tracy, Esquire  
Counsel for Defendant